IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR.

O R D E R

Shesh Mal. Versus Rajendra Trivedi.

S.B. Criminal Misc. Petition No. 437/2003 against the order dated 19-2-2003 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Udaipur, in Criminal Revision No. 31/2000.

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Date of Order: October 04, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

None present for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Dr. Rakesh Sinha, for the non-petitioner.

BY THE COURT:

This criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) is directed against the order dated 19-2-2003 passed by the Special Judge, SC/ST (Prevention of Atrocities) Act Cases, Udaipur (for short, "the Revisional Cour" hereinafter) in Criminal Revision No. 31/2000, whereby the revision petition filed by the petitioner against the order dated 30-6-2000 passed by the Additional Chief Judicial Magistrate No.2, Udaipur (for

short, "the trial Court" hereinafter) was dismissed.

No one appears for the petitioner despite repeated calls.

I have heard learned counsel for the non-petitioner and the Public Prosecutor. Carefully perused the orders impugned. I have also gone through the grounds taken in the criminal miscellaneous petition.

From a perusal of the order of the trial Court, it appears that the petitioner purchased the bus No. RPJ-4414 from the non-petitioner for a consideration of Rs. 1,90,101/- and paid a sum of Rs. 50,101/- as the advance money. The document to this effect was reduced to writing being the agreement EX.P/1. The terms and conditions agreed between the parties have been reduced in writing in EX.P/1. The petitioner came with the allegation that the vendor agreed to undertake the general work of the said bus even after selling the bus but he failed to do so and, therefore, the petitioner lodged the crime report. On investigation, the police found that the crime report lodged by the petitioner is unfounded as no such occurrence as alleged by the petitioner ever took place and submitted the negative final report. The police also filed a complaint against the present petitioner for lodging a false report under Section 211 IPC. The negative final report was accepted by the trial Court. Thereafter the petitioner filed a protest petition requesting the trial Court to

treat the protest petition as a complaint. The petitioner himself appeared as a witness in pre-charge evidence stage. The trial Court, on an application filed by the non-petitioner under sub-section (2) of Section 245 of the Code, discharged the non-petitioner on the ground that the case as set up by the petitioner is contrary to the document EX.P/1.

From the statements of the witnesses which were recorded by the police, it also appears that the non-petitioner sold the bus to the petitioner and thereafter the petitioner used the bus for a number of days and after using the vehicle for a number of days, failed to pay the amount of consideration and left the bus at the house of the non-petitioner and thereafter filed a false report.

From the perusal of the order of the trial Court, I am of the view that the trial Court was justified in discharging the non-petitioner in exercise of the power under sub-section (2) of Section 245 of the Code. That order came to be challenged by the petitioner before the Revisional Court and the Revisional Court did not find any erred in the order of the trial Court.

The petitioner has already availed the revision. Both the Courts below are justified in discharging the non-petitioner. It cannot be said that the order impugned would result in serious miscarriage of justice or abuse of process of the Court. The protest petition seeking to treat it as a complaint is nothing

except to pre-empt a complaint against the petitioner.

In this view of the matter, the criminal miscellaneous petition has no force and it is accordingly dismissed.

(H.R. PANWAR), J.

mcs